

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re the Application of: Monteverde)	CUSTOMER NO. 71130
)	
Serial No.: 10/604147)	Group Art Unit: 3622
)	
Filed: June 27, 2003)	Confirmation No.: 1146
)	
Title: SYSTEM AND METHOD FOR)	Examiner: Jeffrey D. Carlson
ESTIMATING THE GEOGRAPHIC)	
LOCATION OF AN INTERNET USER)	
)	
Attorney)	
Docket No.: 35041-400100)	
)	
)	

APPEAL BRIEF

This is an appeal from the decision of the Primary Examiner, dated November 12, 2009, finally rejecting claims 1, 3, 5-15 and 17-23 (the "Office Action"). A Notice of Appeal was filed on February 12, 2010. No oral hearing is requested. Authorization is hereby given to charge \$540 for the filing of the present Appeal Brief, and any additional fees, to Deposit Account No. 502896, and credit any overpayment thereto.

Table of Contents

	<u>Page</u>
I. REAL PARTY IN INTEREST	3
II. RELATED APPEALS AND INTERFERENCES	3
III. STATUS OF CLAIMS	3
IV. STATUS OF AMENDMENTS	3
V. SUMMARY OF CLAIMED SUBJECT MATTER	3
VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL	5
VII. ARGUMENT	5
VIII. CONCLUSION	13
IX. CLAIMS APPENDIX	14
X. EVIDENCE APPENDIX	18
XI. RELATED PROCEEDINGS APPENDIX	19

I. REAL PARTY IN INTEREST

The present application is assigned to Emergency 24, Inc., principal place of business in Chicago Illinois.

II. RELATED APPEALS AND INTERFERENCES

None.

III. STATUS OF CLAIMS

Claims 1, 3, 5-15 and 17-23 are pending in the application.

Claims 1, 3, 5-15 and 17-23 are finally rejected, are appealed, and are set forth in the Claims Appendix.

IV. STATUS OF AMENDMENTS

All amendments have been entered. Formal drawings were filed and accepted.

No amendments to the claims are made herein.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Independent claim 1 is directed to a method of estimating an Internet user's geographic location. The method includes the steps of tracking (Paragraph [0013], line 3, pg. 2) the Internet user's visits to at least one Internet site promoting a business having a business geographic location thereby defining a visited Internet site. The business geographic location of the business promoted by the visited Internet site is determined (Paragraph [0013], line 6, pg. 2) thereby defining a matched business location. The Internet user's geographic location is estimated (Paragraph [0013], line 8, pg. 2) to be at least adjacent to the matched business location. A database having business geographic location information (Paragraph [0015], lines 1-3, pg. 2) for a plurality of Internet sites is provided. The step of determining the business geographic location of the business promoted by the visited Internet site includes matching (Paragraph [0015], lines 9-10, pg. 2) the visited Internet site to an Internet site in the database thereby defining (Paragraph [0015], lines 11-14, pg. 2) a matched Internet site and defining (Paragraph [0015], lines 11-14, pg. 2) the matched business location to be the respective business geographic location of the

matched Internet site.

Independent claim 9 is directed to a method of estimating an Internet user's geographic location. The method includes the steps of providing a database having respective business geographic location information (Paragraph [0015], lines 1-3, pg. 2) for a plurality of Internet sites. The Internet user's visits to a plurality of Internet sites are tracked thereby defining (Paragraph [0015], lines 11-14, pg. 2) a plurality of visited Internet sites. At least one visited Internet site is matched to an Internet site in the database thereby defining (Paragraph [0015], lines 11-14, pg. 2) a matched business geographic location. The matched business geographic location having the most matches (Paragraph [0015], lines 14-17, pg. 2) is comparatively determined (Paragraph [0013], line 6, pg. 2) thereby defining (Paragraph [0015], lines 11-14, pg. 2) a most popular business geographic location. The Internet user's geographic location is estimated (Paragraph [0013], line 8, pg. 2) to be adjacent to the most popular business geographic location.

Independent claim 14 is directed to a system for estimating the geographic location of an Internet user. The system includes a database having respective business geographic location information (Paragraph [0015], lines 1-3, pg. 2) for a plurality of Internet sites and a means for tracking (Paragraph [0013], line 3, pg. 2) Internet sites that the Internet users visits, thereby defining (Paragraph [0015], lines 11-14, pg. 2) a plurality of visited Internet sites. The system also includes a means for estimating the Internet user's geographic location by matching (Paragraph [0015], lines 9-10, pg. 2) each visited Internet site with an Internet site in the database and assigning each visited Internet site the respective corresponding business geographic location information (Paragraph [0015], lines 1-3, pg. 2) for the matched Internet site in the database.

Independent claim 19 is directed to a method of providing Internet search results based upon the estimated (Paragraph [0013], line 8, pg. 2) geographic location of an Internet user. The method includes the steps of providing a database having respective business geographic location information (Paragraph [0015], lines 1-3, pg. 2) for a plurality of Internet sites. The Internet user's visits to a plurality of Internet sites is tracked thereby defining (Paragraph [0015], lines 11-14, pg. 2) a plurality of visited Internet sites. At least one visited Internet site is matched to an Internet site in the database thereby defining (Paragraph [0015], lines 11-14, pg. 2) a matched business geographic location. The matched business geographic location having the most

matches (Paragraph [0015], lines 14-17, pg. 2) is comparatively determined (Paragraph [0013], line 6, pg. 2) thereby defining (Paragraph [0015], lines 11-14, pg. 2) a most popular business geographic location. The Internet user's geographic location is estimated (Paragraph [0013], line 8, pg. 2) to be adjacent to the most popular business geographic location thereby defining (Paragraph [0015], lines 11-14, pg. 2) an Internet user location. An Internet search request is received (Paragraph [0018], line 2, pg. 2) from the Internet search user. Search results are displayed (Paragraph [0018], line 6, pg. 2) for Internet sites having a geographic business location adjacent to the Internet user geographic location.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The Examiner rejected claims 1, 3, 5, 9-10, 14-15 and 17-18 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Publication No. 2002/0111172 to DeWolf ("DeWolf") in view of U.S. Patent No. 6,516,337 to Tripp *et al.* ("Tripp")

The Examiner rejected claims 6-8 and 11-13 under 35 U.S.C. § 103(a) as being unpatentable over DeWolf in view of Tripp and further in view of U.S. Publication No. 2003/0009762 to Hooper *et al.* ("Hooper").

The Examiner rejected claims 19-23 under 35 U.S.C. § 103(a) as being unpatentable over DeWolf in view of Tripp and further in view of U.S. Publication No. 2003/0065805 to Barnes, Jr. ("Barnes").

VII. ARGUMENT

The Rejections Under 35 U.S.C. § 103 Are Improper and Should Be Withdrawn Because No Combination of U.S. Publication No. 2002/0111172 to DeWolf ("DeWolf") and U.S. Patent No. 6,516,337 to Tripp *et al.* ("Tripp") Teaches Each Claim Element.

The Examiner rejected claims 1, 3, 5, 9-10, 14-15 and 17-18 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Publication No. 2002/0111172 to DeWolf ("DeWolf") in view of U.S. Patent No. 6,516,337 to Tripp *et al.* ("Tripp"). This rejection is respectfully traversed.

Neither DeWolf nor Tripp are directed to a method of estimating a user's geographic location. More particularly, neither DeWolf nor Tripp teaches or suggests the claimed system or method of estimating a user's geographic location by matching a visited Internet site to an Internet site in a database of business geographic locations for a plurality of Internet sites.

In contrast, DeWolf is directed to profiling a subscriber based on the subscribers observed location to predict the subscriber's activities. See Abstract, paragraphs [0072], [0073], for example. The subscriber's observed locations are determined by monitoring the location of the subscriber's wireless device. "The subscriber 210 is connected to the wireless network 100 via the wireless device. As the subscriber roams, his/her location is determined either by the wireless network 100 or by using the GPS network 160..." Paragraph [0048], lines 3 - 6. "The profiles include an activity/routing profile (560) a location profile (570), and a subscriber profile (580). The profiles may be generated based simply on the observed data or may be based on the observed data and characteristics associated with the observed data."

In the Final Office Action dated November 12, 2009, the Examiner asserted that "DeWolf *et al.* teaches location-based advertising provided to a user based on a profile that includes location history data. Paragraph 0087 states that the location profile can at least in part be built upon your history of Internet browsing and the geographic location of business/sites that you have visited on the Internet." Office Action, page 2, lines 14 - 18. Applicant respectfully submits that DeWolf's teaching of a profile that includes location history data, based on a history of observed locations, has nothing to do with matching visited sites to a database of

locations for those sites to determine a user's location as claimed.

The Examiner's assertion that DeWolf discloses that the location profile can at least in part be built upon your history of Internet browsing and the geographic locations of business/sites that you have visited on the Internet" is only partially correct. While DeWolf's location profile can indeed at least in part be built on a history of Internet browsing, DeWolf does not teach or suggest using the geographic locations of sites that you have visited on the Internet. Furthermore, DeWolf's location profile is very different in purpose and content from applicant's claimed "user's geographic location." Also, DeWolf uses completely different means such as GPS for determining a history of observed locations that are used in the location profile.

The Examiner asserted that "[r]ecognizing that the user has "visited numerous websites related to the "Outer Banks" (in North Carolina), the system can take this "external data" and use it in an estimation/determination of the location of a user as well form as [sic] a basis for delivering advertising merchants/services relevant to that determined geographic location. Office Action, p. 2, lines

Contrary to the Examiner's characterization, in DeWolf's examples described in paragraph [0087], the "external data including but not limited to Internet browsing" is used as a basis of predicting the location of a vacation, not in an estimation/determination of the location of an Internet user.

In one example, DeWolf recites "during your commute, the location profile 570 would predict your location as somewhere on the route between the commuting hours." Paragraph [0087], lines 1 - 3. This example of predicting a location rather than estimating a location is based on knowledge of your commuting pattern, not upon a matched geographic location of an

internet site you visited. In the vacation example, "the activity/route profile 560 determined that the subscriber 210 is taking a vacation based on the fact that it is Jul. 4th week, the location profile may determine that it is likely that the subscriber 210 will take his vacation on the Outer Banks of North Carolina." Paragraph [0087], lines 5 - 9. "For example, if you always travel to different beach resorts, have progressively been working your way south, and have visited numerous web sites *related to* the Outer Banks, the location profile may identify your location for vacation as the Outer Banks." Paragraph [0087], lines 20 - 24. Thus, this example describes predicting a subscriber's vacation location based in part on Internet Browsing and does not suggest estimating an Internet user's geographic location.

Contrary to the Examiner's characterization, DeWolf merely combines various forms of data including Internet browsing to predict a subject's vacation location. Such a predicted vacation location is not a determined geographic location as the Examiner asserted and has nothing to do with a business geographic location of the business promoted by the visited internet site as particularly claimed. DeWolf merely describes that the subject has "visited numerous web sites related to the Outer Banks." This does not disclose or imply that such websites have business geographic locations in the Outer Banks or that such business geographic locations are used to determine a location of the subject. More likely, such sites would be travel agency websites, map websites, geographic information websites, vacation review websites, weather websites or the like.

The Examiner asserted that "[d]elivering location-based advertising (Outer Banks advertising) according to a common geographic location associated with numerous Outer Banks web visits indicates that the Outer Banks is a popular geographic location for that user." Office Action, page 2, line 22 – page 3, line 1. Applicant respectfully submits that DeWolf's example

of predicting a subject's vacation location based on numerous factors including websites related to a location, whether or not the vacation location is a popular geographic location for the subject, does not involve "tracking the Internet user's visits to at least one Internet site promoting a business having a business geographic location thereby defining a visited Internet site; [and] determining the business geographic location of the business promoted by the visited Internet site thereby defining a matched business location" as claimed.

The Examiner admitted that DeWolf et al does not describe the details of how a business location can be determined for a visited web page. Office Action, p. 3, lines 2 - 3. In fact, DeWolf does not mention anything about determining a business location for a visited website. This is because, in contrast to the present invention, the method of location based profiling described by DeWolf does not require knowledge of a business location for a visited website.

DeWolf's disclosed system has no need to estimate the location of an Internet user based on a database of Internet sites visited because the subscriber's location history is compiled based upon observed locations. DeWolf describes a location profile 570 that may be generated based solely on the observed locations and predict what the location of a subscriber will at a particular time. Paragraph [0086] lines 1 - 3. Thus, DeWolf teaches away from the claimed system and method of matching a visited internet site against a database of Internet Site geographic locations.

The Examiner asserted that Trip teaches a typical search engine having a database or index which correlates web page URLs to a categorization of that web page which would have been obvious for use by DeWolf "so that the geographic location of web pages can be determined accurately and quickly." However, DeWolf does not teach or suggest any need to accurately and quickly determine the geographic location of a web page, and does not mention

anything about the geographic location of a web page.

The Examiner erroneously asserted that "Trip et al also recognizes a need for this index database to store categorization metadata that includes a location for the web site." Office Action, page 3, lines 7-8. The cited portions of Trip recite that conceptual information including intended audience demographics and geographic information would be extremely helpful in generating a more accurate index. Col. 2, lines 33-38. Trip's geography table, as cited with reference to fig. 21, is a database which stores information related to the geographical target market for a given brochure (fig. 21, col. 39, lines 23-26) and has nothing to do with the geographic location of a website. Applicant submits that, contrary to the Examiner's characterization Trip does not teach or suggest storing the geographic location of a web page as claimed.

Even if Trip or some other reference discloses a database of business geographic locations associated to particular websites, Applicant respectfully submits that combining such a database with the disclosure of DeWolf would not result in a teaching or suggestion of the presently claimed invention. Rather, a database having business geographic locations associated with particular websites when combined with the disclosure of DeWolf would result in the disclosure of further enhanced or improved activity/routing profile 560, location profile 570, and/or subscriber profile 580. See DeWolf paragraph [0071]. None of these profiles are used to estimate an Internet user's geographic location. Further, even if these profiles were used to estimate an Internet user's geographic location, this combination would still not suggest matching a visited Internet site to an internet site *in the database* as particularly claimed.

Applicant respectfully submits that persons having ordinary skill in the art would not have been motivated to combine the teachings of Trip with DeWolf because, as set forth above,

DeWolf does not require or assert any need for determining the geographic location of a web page. Trip does not have anything to do with determining the geographic location of an internet user and therefore does not cure the deficiencies of DeWolf recited above.

Since no combination of DeWolf and/or Tripp teaches or suggests each and every element of the claims, Applicant respectfully submits that the rejections of the claims under 35 U.S.C. § 103 are overcome. Reconsideration is respectfully requested.

The Examiner rejected claims 6-8 and 11-13 under 35 U.S.C. § 103(a) as being unpatentable over DeWolf in view of Tripp and further in view of U.S. Publication No. 2003/0009762 to Hooper *et al.* ("Hooper"). This rejection is respectfully traversed. Applicant submits that Hooper's description of creating profiles based upon factors including demographics, residence and amount of time spent on websites, does not teach or suggest anything about "tracking the Internet user's visits to at least one Internet site promoting a business having a business geographic location thereby defining a visited Internet site; [and] determining the business geographic location of the business promoted by the visited Internet site thereby defining a matched business location" as claimed and therefore does not cure the deficiencies of DeWolf and Trip as described above.

Since no combination of DeWolf, Tripp and/or Hooper teaches or suggests each and every element of the claims, Applicant respectfully submits that the rejections of the claims under 35 U.S.C. § 103 are overcome. Reconsideration is respectfully requested.

The Examiner rejected claims 19-23 under 35 U.S.C. § 103(a) as being unpatentable over DeWolf in view of Tripp and further in view of U.S. Publication No. 2003/0065805 to Barnes, Jr. ("Barnes"). This rejection is respectfully traversed. Applicant respectfully submits that Barnes' description of location-based advertising which includes advertisers bidding on desired

targeting criteria in order to have their ads included with search results (paragraph [238]) does not cure the deficiencies of DeWolf and Tripp, for example, by describing “estimating the Internet user’s geographic location to be adjacent to the most popular business geographic location thereby defining an Internet user location” as particularly claimed.

Since no combination of DeWolf, Tripp and/or Barnes teaches or suggests each and every element of the claims, Applicant respectfully submits that the rejections of the claims under 35 U.S.C. § 103 are overcome. Reconsideration is respectfully requested.


VIII. CONCLUSION

For at least these reasons, Applicant respectfully submits that the rejections are improper, as the combinations of prior art do not make obvious the elements of the claims or the claims as a whole. The prior art references teach away from combination, the asserted modifications would not be obvious and would be accomplished only through impermissible hindsight, and the Office Action itself fails to demonstrate how the combination or modifications would be obvious. Accordingly, Applicant respectfully requests reconsideration of the patentability of claims 1, 9, 15 and 19. Claims 3, 5-15, 17-18 and 20-23, which depend from the independent claims 1, 9, 15 and 19, are also patentably distinguished over the combination and in condition for allowance.

Respectfully, Applicant requests withdrawal of the present rejection and issuance of a notice of allowance.

Respectfully submitted,

By: _____


Joseph P. Quinn
Reg. No. 45209

Seyfarth Shaw LLP
Two Seaport Lane
Suite 300
Boston MA 02210-2028
Telephone: 617-946-4833
Fax: 617-946-4801
email: bosippio@seyfarth.com

IX. CLAIMS APPENDIX

1. A method of estimating an Internet user's geographic location, comprising:
tracking the Internet user's visits to at least one Internet site promoting a business having a business geographic location thereby defining a visited Internet site;
determining the business geographic location of the business promoted by the visited Internet site thereby defining a matched business location;
estimating the Internet user's geographic location to be at least adjacent to the matched business location and;
providing a database having business geographic location information for a plurality of Internet sites;
wherein the step of determining the business geographic location of the business promoted by the visited Internet site includes matching the visited Internet site to an Internet site in the database thereby defining a matched Internet site and defining the matched business location to be the respective business geographic location of the matched Internet site.
2. (Cancelled)
3. The method as claimed in claim 1 wherein the business geographic location information is determined by an operator of each respective Internet site.
4. (Cancelled)
5. The method as claimed in claim 1 wherein the matched business location is determined by calculating the business geographic location most often matched.
6. The method as claimed in claim 5 wherein the step of tracking the Internet user's visits to at least one Internet site having a business geographic location includes tracking the amount of time the Internet user remains on the Internet site.
7. The method as claimed in claim 6 wherein the step of tracking the Internet user's visits to at least one Internet site having a business geographic location includes disposing a

cookie having a unique identifier on a computer system that the Internet user is using to access the Internet.

8. The method as claimed in claim 7 further comprising providing an Internet user database for recording the matched business location and correlating it to the cookie.

9. A method of estimating an Internet user's geographic location, comprising:
providing a database having respective business geographic location information for a plurality of Internet sites;

tracking the Internet user's visits to a plurality of Internet sites thereby defining a plurality of visited Internet sites;

matching at least one visited Internet site to an Internet site in the database thereby defining a matched business geographic location;

comparatively determining the matched business geographic location having the most matches thereby defining a most popular business geographic location; and

estimating the Internet user's geographic location to be adjacent to the most popular business geographic location.

10. The method as claimed in claim 9 wherein an operator of the respective Internet site determines the business geographic location information.

11. The method as claimed in claim 9 wherein the step of tracking the Internet user's visits to a plurality of Internet sites includes tracking the amount of time the Internet user remains on the Internet site.

12. The method as claimed in claim 11 wherein the step of tracking the Internet user's visits to a plurality of Internet sites includes disposing a cookie having a unique identifier on a computer system that the Internet user is using to access the Internet.

13. The method as claimed in claim 12 further comprising providing an Internet user database for recording the most popular business geographic location and correlating it to the

cookie.

14. A system for estimating the geographic location of an Internet user, comprising:
a database having respective business geographic location information for a plurality of Internet sites;

a means for tracking Internet sites that the Internet users visits, thereby defining a plurality of visited Internet sites; and

a means for estimating the Internet user's geographic location by matching each visited Internet site with an Internet site in the database and assigning each visited Internet site the respective corresponding business geographic location information for the matched Internet site in the database.

15. The system as claimed in claim 14 wherein the means for tracking Internet sites includes disposing a cookie on a computer system that the Internet user is using to access the Internet.

16. (Cancelled)

17. The system as claimed in claim 14 wherein the means for estimating the Internet user's geographic location further includes a system for quantitatively determining a most popular geographic location.

18. The system as claimed in claim 17 wherein a means for estimating the Internet user's geographic location includes a system for estimating the Internet user's geographic location to be the most popular geographic location.

19. A method of providing Internet search results based upon the estimated geographic location of an Internet user, comprising:

providing a database having respective business geographic location information for a plurality of Internet sites;

tracking the Internet user's visits to a plurality of Internet sites thereby defining a

plurality of visited Internet sites;

matching at least one visited Internet site to an Internet site in the database thereby defining a matched business geographic location;

comparatively determining the matched business geographic location having the most matches thereby defining a most popular business geographic location;

estimating the Internet user's geographic location to be adjacent to the most popular business geographic location thereby defining an Internet user location;

receiving an Internet search request from the Internet search user; and

displaying search results for Internet sites having a geographic business location adjacent to the Internet user geographic location.

20. The method as claimed in claim 19 wherein the step of tracking the Internet user's visits to a plurality of Internet sites includes disposing a cookie having a unique identifier on a computer system that the Internet user is using to access the Internet.

21. The method as claimed in claim 20 further comprising providing a database for recording the Internet user location and correlating it to the cookie.

22. The method as claimed in claim 19 wherein the step of displaying search results for Internet sites having a geographic business location adjacent to the Internet user location includes prioritizing the search results based upon the amount of money each respective Internet site is willing to pay for being displayed.

23. The method as claimed in claim 22 wherein the amount of money each respective Internet site is willing to pay for being displayed includes a pay-per-click bidding system.

24. - 26. (Canceled)

X. EVIDENCE APPENDIX

None.

XI. RELATED PROCEEDINGS INDEX

None.